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*Attorney for Defendants
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Actavis, Inc., and Actavis plc*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

VIVUS, INC.,

Plaintiff,

v.

**ACTAVIS LABORATORIES FL, INC.,
ACTAVIS, INC., and ACTAVIS PLC,**

Defendants.

Civil Action No. 14-3786 (FSH)(MAH)

(Filed Electronically)

**STIPULATION AND ORDER DISMISSING WITHOUT PREJUDICE
DEFENDANTS ACTAVIS, INC. AND ACTAVIS PLC
AND AMENDING CAPTION TO REFLECT SAME**

This stipulation is made by and between (i) VIVUS, Inc. ("Plaintiff"); and (ii) Actavis Laboratories FL, Inc., Actavis, Inc., and Actavis plc (collectively, "Defendants").

WHEREAS, Plaintiff filed suit against Defendants in the above-captioned case (the "Action");

WHEREAS, Actavis, Inc. and Actavis plc maintain that they are not proper defendants in the Action;

WHEREAS, Plaintiff disagrees with the positions of Defendants stated above;

WHEREAS, resolution of such disagreement by motion practice during the Action would consume time and expense that Plaintiff and Defendants wish to avoid by entering into this Stipulation;

NOW THEREFORE, Plaintiff and Defendant, by and through their respective undersigned counsel, stipulate and agree as follows:

1. Plaintiff hereby dismisses without prejudice Defendants Actavis, Inc. and Actavis plc pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).
2. Actavis, Inc. and Actavis plc agree to be bound by any injunction, judgment, order, or decision, rendered as to Actavis Laboratories FL, Inc. in the Action (including any appeals) as if they were named defendants in the Action.
3. Actavis, Inc. and Actavis plc agree that, to the extent they have in their possession, custody, or control information or materials that would be discoverable in the Action if they were parties to the Action (“discovery”), they will search for and provide such discovery to Actavis Laboratories FL, Inc., and Actavis Laboratories FL, Inc. will produce such discovery in response to discovery requests served on Actavis Laboratories FL, Inc. in the Action as if the discovery were Actavis Laboratories FL, Inc.’s own. In the Action, Plaintiff may seek to depose employees of Actavis, Inc. and Actavis plc by serving deposition notices on Actavis Laboratories FL, Inc., without need for: (a) service of subpoenas; or (b) if located outside the United States, adherence to the procedures of the Hague Convention or other methods of foreign service. Actavis Laboratories FL, Inc. will also accept Fed. R. Civ. P. 30(b)(6) deposition notices containing topics directed to information that may be held by Actavis, Inc. and Actavis plc and any witness presented in response thereto shall investigate information in the possession, custody, or control of Actavis, Inc. and Actavis plc if required. Actavis, Inc. and Actavis plc further

agree to be bound by the resolution of discovery matters in this Action. For clarity, this paragraph does not constitute a waiver of any objections or defenses to, or any privilege or immunity from, the provision of discovery otherwise available to Actavis Laboratories FL, Inc., Actavis, Inc., and Actavis plc under the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or any other applicable authority.

4. Actavis Laboratories FL, Inc. agrees that, for purposes of the Action only, it will not contest personal jurisdiction in the U.S. District Court for the District of New Jersey and, as such, will not move to dismiss the Action on grounds that the U.S. District Court for the District of New Jersey lacks personal jurisdiction over Actavis Laboratories FL, Inc. Actavis Laboratories FL, Inc. further agrees that it will not contest venue in the District of New Jersey in the Action and, as such, will not move to change the venue of the Action. Actavis Laboratories FL, Inc. further agrees that it will not assert any defense under Federal Rule of Civil Procedure 19 or otherwise assert that Actavis, Inc. or Actavis plc is a necessary party.

5. Actavis, Inc. and Actavis plc submit and consent to the personal jurisdiction of the District of New Jersey for purposes of enforcing this Stipulation and Order, and to adjudicate or resolve any disputes regarding its terms, interpretation, application, or requirements.

6. The terms of this Stipulation are made without prejudice to the respective positions of the Plaintiff and Defendants as to whether the Actavis, Inc. and Actavis plc would have been proper defendants in the Action, and whether Actavis Laboratories FL, Inc. would have been subject to personal jurisdiction in the District of New Jersey, but for the Stipulation.

7. The terms of this Stipulation cannot be used by Plaintiff or Defendants to argue for or against jurisdiction in the future.

8. The terms of this Stipulation are without prejudice to any claims, defenses, or counterclaims that may be asserted in the Action, except with respect to the issues of personal jurisdiction, venue, and/or necessary parties addressed in Paragraphs 4 and 5 herein.

9. The case caption for the Action shall be amended to remove Actavis, Inc. and Actavis plc, and the new caption shall be as follows:

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

VIVUS, INC.,

Plaintiff,

v.

ACTAVIS LABORATORIES FL, INC.,

Defendant.

Civil Action No. 14-3786 (FSH)(MAH)

STIPULATED AND AGREED TO BY:

Dated: August 4, 2014

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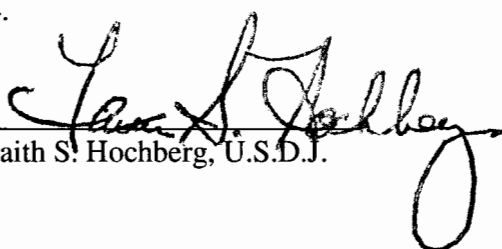
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It is **SO ORDERED** this 5th day of August, 2014.



Hon. Faith S. Hochberg, U.S.D.J.